

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5189 of 1987

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

- =====
1. Whether Reporters of Local Papers may be allowed : YES
to see the judgements?
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge? : NO

R A TRIVEDI

Versus

BANK OF BARODA

Appearance:

MR AD MITHANI for Petitioner
None present for Respondents

CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 27/04/2000

ORAL JUDGEMENT

1. After holding a full-fledged departmental inquiry, in which grave and serious misconduct alleged against the petitioner was found to be proved, he was ordered to be dismissed from the Bank services. Against this order, the petitioner filed an appeal before the appellate authority which also came to be dismissed under the order dated 23rd May, 1985. Hence, this special civil application.

2. Learned counsel for the petitioner contended that whole of the inquiry proceedings and the order passed relying thereon vitiates only on the ground that the

inquiry report was not supplied to the petitioner before passing the order of penalty of dismissal. Second contention has been raised that the second show cause notice was not given to the petitioner. That the disciplinary authority and the inquiry officer are different and as such before the disciplinary authority has passed any order of penalty, an opportunity of hearing should have been given to the petitioner. It has next been contended that the appellate authority has not given an opportunity of personal hearing to the petitioner. Lastly, it is contended that the petitioner filed the review application but the same has not been decided so far.

3. None present for the respondents.

4. I have given my thoughtful consideration to the submissions made by the learned counsel for the petitioner.

5. It is not in dispute that the memo of appeal filed by the petitioner before the appellate authority has not been produced on the record. The order of the appellate authority is on the record and therefrom I find that all these contentions which have been raised by the learned counsel for the petitioner in these proceedings under Article 226 of the Constitution were not raised before the appellate authority. What contentions have been raised before the appellate authority in the memo of appeal are reflecting from the order and if we compare those with these contentions raised by the counsel for the petitioner in this special civil application then it is apparent that those may not be the contentions raised in the memo of appeal.

6. Learned counsel for the petitioner submitted that the petitioner may be afforded an opportunity to produce the memo of appeal on the record of this special civil application.

7. I fail to see what to say to find any justification in this request of the learned counsel for the petitioner. This special civil application has been filed in the year 1987 and more than 13 years have already been passed but the petitioner if he really considers it to be a necessary document in this proceeding, it could have been filed long back. Otherwise also, no justification is furnished by the petitioner in the memo of special civil application nor during the course of arguments his learned counsel could explain why this memo of appeal has not been presented

along with the memo of the special civil application. If a document which was available with the petitioner has not been produced on the record then an adverse inference can be drawn that if it would have been produced, the same would have gone against him. In the absence of the memo of appeal it is difficult to believe what to say to accept that these arguments raised by the learned counsel for the petitioner in this court have been advanced by him before the appellate authority. It is true that one or two contentions raised before this court would not have been available to the petitioner before the appellate authority but so far as the other contentions raised are certainly available to the petitioner to be raised and if the same were not raised or deemed to have not been raised. As the memo of appeal has not been produced on the record, the same cannot be allowed to be raised. However, still I consider it to be appropriate to deal with each and every ground raised by the learned counsel for the petitioner on merits.

8. First of all I consider it to be appropriate to deal with the ground raised re. nonsupply of the inquiry report. During the course of the arguments, learned counsel for the petitioner admitted that along with the order of penalty passed by the disciplinary authority a copy of inquiry report was sent to the petitioner. So it is not the case where inquiry report was not supplied to the petitioner. In fact, the grievance of the petitioner is that it should have been supplied to the petitioner before passing of the final order which clearly reflects from the second contention raised by the learned counsel for the petitioner. It is his submission that the petitioner should have been given the show cause notice and enclosed to which this inquiry report should have been supplied to him and he should have been given an opportunity of making a representation and then only the final order could have been passed. In case it is accepted that the second show cause notice has to be given to the petitioner before passing of the final order then certainly the first contention raised deserves acceptance. It is to be noticed that the respondent Bank in exercise of the powers conferred by section 19 of the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970 in consultation with the Reserve Bank and with the previous sanction of the Central Government made the regulations to conduct the disciplinary inquiry against the delinquent officer. These are known as Bank of Baroda Officer Employees' (Discipline & Appeal) Regulations, 1976. When the statutory regulations are there for conducting of disciplinary proceedings, holding of the inquiry, passing

of the final order, appeal etc. this contention raised by the learned counsel for the petitioner is to be examined with reference to those regulations. The inquiry report is to be furnished to the delinquent officer on which there is no dispute but the stage at which it has to be supplied to the petitioner is an issue to be decided. Regulation 6 of the Regulations aforesaid lay down the procedure to be followed for imposing major penalties. In this regulation, as contended by the learned counsel for the petitioner is difficult to read that the inquiry report prepared by the inquiry officer has to be given to the petitioner by the said officer. Learned counsel for the petitioner has also failed to put the finger on any of the clauses in these regulations, which provide that after receipt of the inquiry report from the inquiry officer by disciplinary authority, copy of the same has to be given to the petitioner. Regulation 7 is the relevant provision for deciding this case and it heads: "Action on the Inquiry Report". Clauses (1) and (2) of this regulation of the Regulations aforesaid are not relevant and I skip over the same. Clause (3) is the only relevant provision for decision of this case and it reads:

(3) If the Disciplinary Authority, having regard to its findings on all or any of the articles of charge, is of the opinion that any of the penalties specified in regulation 4 should be imposed on the officer employee it shall, notwithstanding anything contained in regulation 8, make an order imposing such penalty.

9. From reading of this clause, it is clear that on receipt of the inquiry report, the disciplinary authority has to record its own findings on all or any of the articles of charge. Thereafter, having regard to its findings on the charges, if it is of the opinion that any of the penalties specified in regulation 4 should be imposed on the officer concerned, it shall make an order imposing such penalty. This provision nowhere contemplates or provides of giving of the second show cause notice as well as the copy of the inquiry report to the delinquent officer. The scheme underlying to this regulation is very clear and the disciplinary authority has to record its own findings on the charges and naturally where it is confirming the finding on the charges of the inquiry officer, copy of the inquiry report may be sent along with the order. Rule 9 is equally relevant and reference of which has to be made here also. It is captioned, "Communication of Orders". Orders made by the Disciplinary Authority under

regulation 7 or regulation 8 shall be communicated to the officer/employee concerned, who shall also be supplied with a copy of the report of inquiry, if any. The inquiry report, which is clearly borne out from the reading of this regulation, is to be supplied to the petitioner along with the order made by the disciplinary authority under Regulation 7. The contention raised by the learned counsel for the petitioner that the inquiry report is not supplied and second notice was not given to the petitioner is devoid of any substance and merits.

10. So far as the second contention raised regarding giving of the opportunity of hearing to the petitioner by the disciplinary authority before making final order is concerned, it is equally of no substance and merits. On being asked, learned counsel for the petitioner has failed to show any provision whatsoever from the regulations aforesaid wherein it is provided that the disciplinary authority which is not the inquiry officer in the matter while passing the order under Regulation 7 has to afford an opportunity of personal hearing to the officer concerned. In the absence of any rule, it is difficult to stretch the applicability of the principles of natural justice to the extent what the learned counsel for the petitioner is contending.

11. Regulation 17 of the Regulations aforesaid provides that an officer/employee may appeal against an order imposing upon him any of the penalties specified in regulation 4. This provision nowhere gives out any right of personal hearing to the petitioner by the appellate authority. What this provision lays down is that after receipt of appeal, the appellate authority may pass an order confirming, enhancing, reducing or setting aside the penalty or remitting the case to the authority which imposed the penalty or to any other authority with such direction as it may deem fit in the circumstances of the case. This provision lays down clearly the condition in which the opportunity of personal hearing is to be provided to the delinquent officer. This what is borne out from the proviso to this provision and the case of the petitioner does not fall thereunder. This contention of the learned counsel for the petitioner that the appellate authority has to provide an opportunity of hearing to the petitioner in the appeal also deserves no acceptance.

12. So far as the last contention is concerned that the review is pending, I fail to see how it is of any help to the petitioner leaving apart the question whether review was maintainable or not or it is pending or not.

Even if it is accepted that it is maintainable and pending, I fail to see then how this writ petition is maintainable before this court. If the review is maintainable and in fact it has been filed then it is a case where not only the alternative remedy was available to the petitioner but he has also availed of it. In such case, this approach of the petitioner to this court is difficult to appreciate. If this contention is accepted then this special civil application deserves to be dismissed on the ground that it is not maintainable at this stage. Reference in this respect may have to the decision of the Apex Court in the case of Bombay Metropolitan Region Development Authority vs. Gokak Patel Volkart Ltd. & Ors. reported in JT 1995 (1) SC 155.

13. In the result, this special civil application fails and the same is dismissed. Rule discharged. Interim relief, if any, granted stands vacated. No order as to costs.

zgs/-